

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

Competitive Product Prices
Priority Mail Express International, Priority Mail
International, First-Class Package International
Service & Commercial ePacket Contracts
Priority Mail Express International, Priority Mail
International, First-Class Package International
Service & Commercial ePacket Contract 9

Docket No. MC2020-233

Competitive Product Prices
Priority Mail Express International, Priority Mail
International, First-Class Package International
Service & Commercial ePacket Contract 9 (MC2020-233)
Negotiated Service Agreements

Docket No. CP2020-263

ORDER ADDING PRIORITY MAIL EXPRESS INTERNATIONAL, PRIORITY MAIL
INTERNATIONAL, FIRST-CLASS PACKAGE INTERNATIONAL SERVICE &
COMMERCIAL EPACKET CONTRACT 9 TO THE COMPETITIVE PRODUCT LIST

(Issued October 1, 2020)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Express
International, Priority Mail International, First-Class Package International Service &

Commercial ePacket Contract 9 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

II. BACKGROUND

On August 31, 2020, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. §§ 3040.130-.135, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. Among the supporting documents, the Postal Service included a copy of the Governors’ Decision authorizing the product, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Governors’ Decision and the contract, customer-identifying information, and related financial information remain under seal. *Id.* Attachment F.

The Postal Service will notify the mailer of the effective date of the Agreement after the Commission completes its review. Request, Attachment B at 3. If the effective date of the Agreement is the first of the month, the Agreement will expire one year after the effective date; otherwise, the Agreement will expire on the last day of the month one year after the effective date. *Id.*

¹ USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9 to Competitive Product List and Notice of Filing Materials Under Seal, August 31, 2020 (Request).

On September 1, 2020, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.²

On September 3, 2020, Chairman's Information Request No. 1 was issued.³ CHIR No. 1 asked the Postal Service to address anticipated cost changes as a result of the COVID-19 pandemic. CHIR No. 1. The Postal Service responded to CHIR No. 1 on September 10, 2020, stating that it was not able to provide revised forward-looking estimates of attributable costs, but indicating that it expects actual transportation costs to be higher than the published inflation estimates used to project cost coverage would indicate.⁴

On September 15, 2020, the Commission issued Commission Information Request No. 4 in Docket No. ACR2019, asking the Postal Service to describe how the Postal Service is monitoring its international negotiated service agreements (NSAs) to ensure that they remain compensatory despite the expectation of higher-than-projected costs.⁵ The Postal Service responded on September 23, 2020, describing how it monitors cost coverage of international NSAs only on an annual basis, but that it includes a contingency factor in the financial analyses to help absorb cost increases.⁶ It stated that it is increasing the contingency it uses for international air transportation for newly-filed international NSAs, but also that the expected increase in transportation costs is unlikely to have a precipitous effect on cost coverage. *Id.*

² See Docket No. MC2020-233, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, September 1, 2020.

³ Chairman's Information Request No. 1, September 3, 2020 (CHIR No.1).

⁴ Response to Chairman's Information Request No. 1, September 10, 2020 (Response to CHIR No. 1).

⁵ Docket No. ACR2019, Commission's Information Request No. 4, September 15, 2020 (Docket No. ACR2019 CIR No. 4).

⁶ Docket No. ACR2019, Responses of United States Postal Service to Questions 1-2 of Commission Information Request No. 4, September 23, 2020, questions 1-2. (Docket No. ACR2019 Response to CIR No. 4).

III. COMMENTS

The Public Representative filed comments on September 8, 2020.⁷ No other interested person filed comments. The Public Representative concludes that the contract meets the requirements to be classified as a new competitive product, and that the contract should generate sufficient revenues to cover its costs. PR Comments at 2. He characterizes as reasonable the Postal Service's assertions regarding the classification of the contract as a competitive product. See *id.* at 3.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the supporting data filed under seal, the responses to CHIR No. 1 and Docket No. ACR2019 CIR No. 4, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3040.134. Before adding a product to the competitive product list, the Commission must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3040.132(f), (g), and (h).

⁷ Public Representative Comments on Postal Service Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9 to the Competitive Product List, September 8, 2020 (PR Comments).

The Postal Service asserts that it provides postal services of the kind provided under the contract in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. The availability of other private sector providers supports this conclusion. The contract partner and the Public Representative support the addition of the Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9 product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements, the comments filed, and the Postal Service's supporting justification, the Commission finds that Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9 is appropriately classified as competitive and is added to the competitive product list.

Cost considerations. Because the Commission finds Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3035.105 and

3035.107. As long as the revenue generated by the contract exceeds its attributable costs, the contract is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the contract covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

Based on a review of the record, the Commission finds that the rates during the term of the contract should cover the contract's attributable costs. 39 U.S.C. § 3633(a)(2). Thus, the Commission finds that the contract should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds the contract is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3035.107(c). Accordingly, a preliminary review of the contract indicates it is consistent with section 3633(a).

The Commission will review the contract's cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Reliability of Cost Projections. The Commission is concerned that the current volatility in transportation costs caused by the COVID-19 pandemic makes the cost models used to project cost coverage less reliable than they normally would be. This concern is heightened by the Postal Service's discussion in the Response to CHIR No. 1 that it expects to incur increased transportation costs, even though the published inflation estimates relied upon for cost coverage projections indicate that transportation costs are falling. See Response to CHIR No. 1.

The Commission is mindful, however, that the uncertainty created by the ongoing pandemic makes it difficult to develop more-reliable forward-looking cost estimates. Accordingly, the Commission has evaluated the cost coverage of this contract under the

existing model, paying close attention to the magnitude of the contingency factor the Postal Service described in Docket No. ACR2019 Response to CIR No. 4. The Commission encourages the Postal Service to monitor the performance of this agreement in comparison to the cost coverage projections included in the workpapers.

Other considerations. The Postal Service will notify the mailer of the effective date of the Agreement after the Commission completes its review. Request, Attachment B at 3. If the effective date of the Agreement is the first of the month, the Agreement will expire one year after the effective date; otherwise, the Agreement will expire on the last day of the month one year after the effective date. *Id.*

The contract also contains a provision whereby the Postal Service can extend the contract for two three-month periods provided the Commission is notified at least seven days prior to the contract's expiration date. *Id.* at 3. The Commission finds the two potential three-month extension periods are reasonable because the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in these dockets.

In conclusion, the Commission approves Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9 as a new product. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9 (MC2020-233 and CP2020-263) is added to the competitive product list as a new product under

Negotiated Service Agreements, International. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

2. The Postal Service shall promptly file notice of the instant contract's termination with the Commission in these dockets if the instant contract terminates prior to the scheduled expiration date.
3. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Erica A. Barker
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3040, subpart A—Competitive Product List. These changes reflect the Commission's order in Docket Nos. MC2020-233 and CP2020-263. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Appendix B to Subpart A of Part 3040—Competitive Product List

Negotiated Service Agreements*

Outbound International*

Priority Mail Express International, Priority Mail International, First-Class Package
International Service & Commercial ePacket Contract 9

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

Negotiated Service Agreements*

Outbound International*

Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9

2500 Negotiated Service Agreements

2510 Outbound International

2510.16 Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contracts

- Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9

Baseline Reference

Docket Nos. MC2020-233 and CP2020-263

PRC Order No. 5708, October 1, 2020

Included Agreements

CP2020-263, expires TBD
